

**REMARKS/ARGUMENTS**

Claims 1-5, 7-12 and 14 are pending in the above application.

The Office Action dated September 4, 2008, has been received and carefully reviewed. In that Office Action, claims 1-5, 7-12 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro in view of Stevens. Reconsideration and allowance of claims 1-5, 7-12 and 14 is respectfully requested in view of the following remarks.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro in view of Stevens. Claim 1 recites, *inter alia*, a method for a cell phone service provider to communicate an alert message to a cell phone user who is a member of a class of recipients. The method includes determining that the user is located in a given geographic area and that the user is a member of a class intended to receive the alert. As acknowledged in the Office Action, Navarro does not disclose determining that the user is a member of a class that is intended to receive the alert. However, the Office Action indicates that it would have been obvious to modify Navarro to determine whether a recipient is a member of a class intended to receive and alert based on the teachings of Stevens. It is respectfully submitted that Stevens does not show or suggest the concept of determining that a user is a member of a class intended to receive an alert, and that therefore claim 1 is not obvious based on Navarro in view of Stevens.

Stevens discusses at column 4, lines 18-35, that certain subscribers may determine what types of alerts to receive. For example, according to Stevens, some subscribers may wish to receive tornado warnings but not severe thunderstorm warnings. Thus, when a severe thunderstorm alert is sent to warn persons in a certain

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geographic area, the users who have decided not to receive severe thunderstorm warnings will not be alerted. It is respectfully submitted that, whether or not a user chooses to receive a severe thunderstorm warning, that user is still part of the class intended to receive the alert. In other words, that user could still be struck by lightning, and therefore the user is part of the class for which warnings are intended. The fact that the user chooses not to receive the warnings does not remove him from that class of persons intended to receive the warning.

This difference may be better understood from a comparison of an example of a user class discussed in one example in the present specification. At page 5, lines 9-14, the class of users consisting of firemen is discussed. Messages regarding a traffic accident would be sent to users of the fireman class - that is, users who are intended to receive the warning - who are in the given geographic area. These messages are not sent based on the preference of the user but rather based on the class to which the recipient belongs. This is different than, and not suggested by Stevens who merely allows users to decide what messages to receive. For this reason, it is respectfully submitted that Stevens would not provide an individual of ordinary skill in the art with a reason to modify Navarro to determine that a user is a member of a class that is intended to receive the alert as recited in claim 1. At most Stevens suggest allowing Navarro's users to decide not to receive certain warning. Claim 1 is submitted to be allowable over the art of record for at least this reason.

Claims 2-5 and 7 depend from claim 1 and are submitted to be allowable for at least the same reasons as claim 1. Claim 5 further distinguishes over these references by reciting a step of permitting a user to determine the frequency with which communications are provided. The Office Action indicates that this feature is inherently

present in Navarro. It is respectfully submitted that the examiner has not satisfied the requirements of MPEP 2112 for establishing inherency. That is, the examiner has not shown that Navarro necessarily allows a user to determine the frequency with which messages are received ("To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 49 U.S.P.Q. 2d 1949, 1950-51 (Fed. Cir. 1999)). In fact, Navarro teaches away from such a feature. In paragraph 0023, Navarro teaches that a wireless communication system may periodically retransmit warnings. Far from allowing a user to decide a frequency for receiving such warnings, Navarro teaches at paragraph 0025 that a user's preference not to receive warnings can be overridden. Navarro thus may force a user to receive warnings even when the user does not want to. For these reasons, it is respectfully submitted that Navarro does not show, explicitly or inherently, a step of permitting a user to determine the frequency with which communications are provided, and that claim 5 further distinguishes over the art of record for this reason.

Claim 7 further distinguishes over the art by reciting steps of defining the location of a destination contained in the message and communicating to the user directions from his present location to the destination. The Office Action asserts that this feature is shown in paragraph 0025 of Navarro. However, Navarro in no manner shows or suggests 1) defining the location of a destination or 2) communicating to the user directions from his present location to the destination. Navarro only indicates that information such as "recommended action for the user" can be communicated.

“Recommended action” in no manner suggest a destination or directions to a destination as recited in claim 7. Claim 7 further distinguishes over the art of record for this reason.

Claim 8 is recites a system for communicating from a cell phone service provider to a cell phone user an alert message, which system includes, *inter alia*, second determining means for determining that a user is a member of a class intended to receive the alert. As discussed above in connection with claim 1, neither Navarro nor Stevens teaches determining whether a user is a member of a class intended to receive an alert. Claim 8 is therefore submitted to be allowable for at least the same reasons as claim 1.

Claims 9-12 and 14 depend from claim 8 and are submitted to be allowable for at least the same reasons as claim 8. Claim 11 is submitted to further distinguish over the art of record for at least the same reasons as claim 5. Claim 14 is submitted to further distinguish over the art of record for at least the same reasons as claim 7.

### **CONCLUSION**

Each issue raised in the Office Action dated September 4, 2008, has been addressed, and it is believed that claims 1-5, 7-12 and 14 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact Scott Wakeman (Reg. No. 37,750) at the telephone number listed below.

*Deposit Account Authorization*

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,

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